

GAHC010212892023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : AB/3286/2023

DASARATH RAY @ DIPJYOTI ROY
R/O MAGURMARI VILLAGE,
P.S.- KOKRAJHR,
DIST.- KOKRAJHR (ASSAM),
REP. BY HIS FATHER SRI FANI BHUSHAN ROY, AGED ABOUT 54 YEARS,
S/O JITEN ROY, R/O MAGURMAGRI VILLAGE, P.S.- KOKRAJHR, DIST.-
KOKRAJHR, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

For the petitioner(s)	: Mr. B. Bora, Advocate Mr. P.S. Raja, Advocate
For the respondent(s)	: Ms. B. Bhuyan, Sr. Advocate Ms. M. Chakraborty, Advocate Ms. R. Das, Advocate Mr. M. Sarania, Advocate

– **BEFORE** –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KARDAK ETE

Date of Hearing : 22.07.2024.

Date of judgment : 29.07.2024

JUDGMENT & ORDER

(CAV)

(Vijay Bishnoi, CJ)

1. Heard Mr. B. Bora, learned counsel appearing for the applicant. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam, appearing for the respondent State of Assam.

2. The matter is placed before us to answer the following question referred to us by the learned Single Judge in this Anticipatory Bail Application.

“Whether an application under Section 438 of the Code of Criminal Procedure, 1973 is maintainable by a juvenile before he is actually apprehended on accusation of having committed a non-bailable offence?”

3. The events leading to place this Reference before this Court are as under:

A learned Single Judge of this Court, in the case of ***Kara Taling vs. The State of Arunachal Pradesh***, reported in ***2022 (3) GLT 828 (Anticipatory Bail Application No. 40/2022, decided on 27.04.2022)***, has dismissed the Anticipatory Bail Application filed on behalf of a juvenile, while passing the following order:

“7. Having heard the submissions of learned Advocates of both side, I have carefully gone through the petition and the documents placed on record and also perused the case laws referred by them. Admittedly, there is no decided case law of Hon’ble Supreme Court on this point. Also perused the relevant provision of the Juvenile Justice (Care and Protection of Children) Act, 2015.

8. It appears that Juvenile Justice (Care and Protection of Children) Act 2015, is a Special Act. It was enacted with the objective of consolidating and amending the law relating to children who are found to be in conflict with law and the children who needs care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, herein under and for matters connected therewith or incidental thereto.

9. Section 12 of the Act deals with bail of juvenile. It provides that:-

(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained

by police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a Probation Officer or under the care of any fit. Provided that such person shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice and the Board shall record the reasons for denying the bail and circumstances that lead to such a decision.

- (2) When such person having been arrested is not released on bail under sub-section (1) by the officer in-charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.*
- (3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.*
- (4) When a child in conflict with law is unable to fulfil the condition of bail order within seven days of bail order, such child shall be produced before the Board for modification of the conditions of bail.*

10. A cursory perusal of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, reveals that the Act itself is a complete code to deal with any eventualities relating to a child in conflict with law. The aforesaid Act was enacted to protect the interest of the juvenile and as such, the word 'arrest' is not there, instead the word 'apprehended' is there. Mr. Bori, the learned Addl. P.P. has rightly pointed this out during hearing. The 2 (two) terms, i.e. 'arrest' and 'apprehended' the first one being mentioned in Section 438 Cr.P.C. and the later being mentioned in the Juvenile Justice (Care and Protection of Children) Act, 2015, are not synonymous. One of the condition precedents for invoking the jurisdiction under Section 438 Cr.P.C. is that there is apprehension of arrest. But, admittedly, there is no such provision of arrest in the Juvenile Justice (Care and Protection of Children) Act, 2015. When a provision is not there in the Act itself, it cannot be read therein.

11. Thus, having examined the present question, in the light of the object and reason sought to be achieved by the Special Act, i.e. Juvenile Justice (Care and Protection of Children) Act 2015, and also drawing premises from the illuminating discourse, made herein above, this Court is unable to record concurrence with the submission of Mr. N. Ratan, learned counsel for the applicant, and to hold that the petition under Section 438 of the Cr.P.C., by a minor/juvenile, is maintainable. In view of above, the Anticipatory Bail Application stands dismissed. However, it is being clarified that in the event of apprehension of the alleged child, here in this case, he shall be dealt with under

the relevant provision of the said Act.”

4. Another learned Single Judge of this Court, while considering the instant Anticipatory Bail Application (**A.B. No. 3286/2023: Dasarath Ray @ Dipjyoti Roy vs. The State of Assam**) filed on behalf of a juvenile, has disagreed with the views expressed by the co-ordinate Bench in **Kara Taling vs. The State of Arunachal Pradesh** (supra) and has made the above-mentioned Reference with the following observations:

“8. I have considered the rival submissions made by learned counsel for both the sides as well as perused the materials available on record. I have also gone through the rulings cited by learned counsel for both the sides.

9. In the case of **“Kara Taling vs The State of Arunachal Pradesh” (AB No. 40 of 2022)** a coordinate Bench of this court held that an application under Section 438 of the Code of Criminal Procedure, 1973 is not maintainable in case of juvenile/minor. While coming to the said finding, the coordinate Bench relied upon following cases cited by the prosecution side:

- a) (2016) 2 Cal Cri.L.J 562
- b) Mominul Islam vs State of Assam (AB No. 1661/ 2019)
- c) Satendra Sharma vs State of MP [2014 0 Supreme (MP) 354]
- d) Shahab Ali (Minor) & Another vs State of UP [2020 1 Crimes (HC) 276]
- e) Suhana Khatun & Ors vs State of West Bengal [CRM No. 2793 of 2021]
- f) K. Vignesh vs State represented by the Inspector of Police, Chennai [(2017)0 Supreme (Mad) 892]

10. Relying on the aforementioned rulings, the coordinate bench in **“Kara Taling vs The State of Arunachal Pradesh” (Supra)** based its findings mainly on following grounds –

i. As the word “arrest” has not been used in Juvenile Justice (Care and Protection of Children) Act, 2015 and a child in conflict with law cannot be arrested and he can only be apprehended, hence, there cannot be any apprehension of being arrested by a juvenile and therefore an application under Section 438 of the Code of Criminal Procedure, 1973, by a juvenile, is not maintainable;

ii. As the Juvenile Justice (Care and Protection of Children) Act, 2015 is a complete code in itself which deals with all eventualities relating to a child in conflict with law, there is no room for applicability of Section 438 of the code of criminal procedure, 1973 in case of a juvenile in conflict with law.

11. Having gone through the order dated **27/04/2023**, passed by the

coordinate bench of this court in the case of “**Kara Taling vs The State of Arunachal Pradesh**” (**Supra**) as well as the rulings of various high Courts relied upon by it (as stated in paragraph No.9 hereinbefore), I am unable to persuade myself with the reasonings mentioned therein for excluding the operation of Section 438 of the Code of Criminal Procedure, 1973 in case of a juvenile. Rather, the reasoning given by the Allahabad High Court in “**Mohammad Zaid -vs- State of U.P. & another along with connected matters**” (**Supra**), while holding that a “child” or a “child in conflict with law” can file an application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 and same would be maintainable, appears to be more reasonable.

12. Though, in the Juvenile Justice (Care and Protection of Children) Act, 2015 the word “arrest” has not been used rather it uses the word “apprehended”, however, the consequences of “arrest” of a person by police under section 41 of the Code of Criminal Procedure, 1973 and the consequences when a juvenile is “apprehended” by police under Section 10 of the Juvenile Justice (Care and Protection of Children) Act, 2015 are the same, that is, in both the cases, the person/juvenile so arrested or apprehended is deprived of his liberty. In both the cases, irrespective of the different terminology used in both the statutes, initially the arrested/apprehended person (including a juvenile) has to submit himself to police custody for whatsoever minimum time it may be. Though, under Section 10 of the Juvenile Justice (Care and Protection of Children) Act, 2015 an apprehended juvenile in conflict with law shall have to be produced before the Juvenile Justice Board without loss of time, however, the outer limit for the time period for such production is still 24 hours, during which such a juvenile may have to remain in a custody of police. The dictionary meaning of the word “arrest” is “to seize (someone) by legal authority and take them into custody” and so is the meaning of the word “apprehended”, therefore, merely because the word “arrest” has not been used in the Juvenile Justice (Care and Protection of Children) Act, 2015, it would not be reasonable for depriving a juvenile the benefit of Section 438 of the Code of Criminal Procedure, 1973 which may be availed by “any person” who has reasons to believe that he may be arrested on accusation of having committed a nonbailable offence, more so, when the phrase “apprehension of being apprehended” connotes “apprehension of being arrested” only.

13. Moreover, in Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 the provision for bail is there for a juvenile in conflict with law, who has been apprehended or detained by the police. Though, there is a provision for bail, for juvenile in conflict with law, in the Juvenile Justice (Care and Protection of Children) Act, 2015, however, there is no provision in the said Act similar to that of Section 438 of the Code of Criminal Procedure, 1973 for anticipatory bail for juvenile in conflict with law. There is also no provision in the Juvenile Justice (Care and Protection of Children) Act, 2015 which restricts applicability of Section 438 of the Code of Criminal Procedure, 1973 to a juvenile in conflict with law.

14. Section 1(4) (i) of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides as follows: -

(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including –

(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;

15. A cursory perusal of above provision along with Sections 10 and 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 would reveal that though the said Act provides for provisions dealing with all matters at the post detention/apprehension stage of a juvenile who is in conflict with law, however, there is no provision akin to the Section 438 of the Code of Criminal Procedure, 1973 in the said Act which deals with the situation at pre detention/apprehension stage of a juvenile. Therefore, in my considered opinion, the non-obstante clause in the Section 1(4) (ii) of the Juvenile Justice (Care and Protection of Children) Act, 2015 does not exclude the operation of section 438 of the Code of Criminal Procedure, 1973, which is a general law, in case of a juvenile who is in conflict with law. Moreover, excluding the applicability of section 438 of the Code of Criminal Procedure, 1973 in case of a juvenile would leave such a juvenile remedy less till the time he is actually apprehended.

16. In view of above discussion, I, most respectfully, disagree with the view expressed and the decision taken by the coordinate bench of this Court in the case of “**Kara Taling vs The State of Arunachal Pradesh**” (Supra) as well as the rulings relied upon in the said case. It is submitted at bar that though there are conflicting opinions of various High Courts on the question of applicability of Section 438 of the Code of Criminal Procedure, 1973, in case of a juvenile, there is no reported case of the Hon’ble Apex Court in this regard, neither there is any reported case of any division bench or larger bench of this Court in this regard.

17. In view of above discussion, I am of the considered opinion that judicial discipline and propriety demands that the matter be placed before the Hon’ble Chief Justice for referring this case to a Division Bench for answering the following question: -

“Whether an application under Section 438 of the Code of Criminal Procedure, 1973 is maintainable by a juvenile before he is actually apprehended on accusation of having committed a non-bailable offence?”

18. The Registrar (Judicial) of this Court is directed to place the matter immediately before the Hon’ble the Chief Justice for his Lordship’s consideration.”

5. It is apposite to mention that the Code of Criminal Procedure, 1973 (Cr.P.C.) has been repealed with the enactment of the “Bharatiya Nagarik Suraksha Sanhita, 2023” (hereafter referred to as “BNSS”) which came into force on 01.07.2024 and,

now, an Anticipatory Bail Application filed by accused apprehending his/her arrest on accusation of having committed a non-bailable offence is governed by Section 482 of the BNSS, which is reproduced hereunder:

“482. Direction for grant of bail to person apprehending arrest. – (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including –

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;*
- (ii) a condition that the person shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.*
- (iii) a condition that the person shall not leave India without the previous permission of the Court;*
- (iv) such other condition as may be imposed under sub-section (3) of Section 480, as if the bail were granted under that section.*

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under Section 65 and sub-section (2) of Section 70 of Bharatiya Nyaya Sanhita, 2023.”

6. Learned counsel appearing for the respective parties have submitted that Division Bench of the High Court of Allahabad, in the case of **Mohammad Zaid vs. State of U.P. and Another (2023 SCC Online All 230)** and other connected Anticipatory Bail Applications, has taken the view that a child in conflict with law as per the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as “Act of 2015”) can file application for under Section 438 of the Cr.P.C. and the same is

maintainable. Relying on the decision rendered by the Allahabad High Court in the case of ***Mohammad Zaid vs. State of U.P. and Another*** (supra) and also taking into consideration the contrary view expressed by various High Courts, the High Court of Punjab and Haryana in the case of ***Jatin vs. State of Punjab***, reported in ***2024 Supreme (Online (P&H) 203***, has also held that as per the Act of 2015, Anticipatory Bail Application under Section 438 Cr.P.C. filed by a child in conflict with law is maintainable. It is, therefore, contended by the learned counsel for the parties that the two views expressed by the Allahabad High Court and the High Court of Punjab and Haryana may be taken into consideration and the Reference made by the learned Single Judge may be answered.

7. The learned Single Judge of this Court in ***Kara Taling vs. The State of Arunachal Pradesh*** (supra) has held that an Anticipatory Bail Application filed on behalf of a juvenile is not maintainable for the reason that the Act of 2015 itself is a complete Code to deal with the eventualities relating to a child in conflict with law, as the Act of 2015 was enacted to protect the interest of juvenile. It was further held by the learned Single Judge that the word 'apprehend' is not synonymous with the word 'arrest' and there is no such provision of arrest in the Act of 2015, therefore, the Anticipatory Bail Application filed by a juvenile apprehended for commission of a bailable or non-bailable offence is not maintainable.

8. Disagreeing with the above view expressed by the learned Single Judge in ***Kara Taling vs. The State of Arunachal Pradesh*** (supra), another learned Single Judge of this Court in the instant Anticipatory Bail Application (***Anticipatory Bail Application No. 3286/2023 - Dasarath Ray @ Dipjyoti Roy vs. The State of Assam***) has opined that there is no bar imposed for a juvenile, which is in conflict with law, to apply for Anticipatory Bail before he/she is apprehended for commission of a non-bailable offence.

9. The Allahabad High Court, in ***Mohammad Zaid vs. State of U.P. and Another*** (supra), after considering the relevant provisions of the Cr.P.C. as well as the Act of

2015 in detail, has held as under:

“11. After having heard learned counsels for the parties and learned Amicus Curiae at length, the situation which arises is that a child in conflict with law cannot be left to be remedy-less till the time of his apprehension by the concerned authority or arrest whatever the case may be. Although Section 1(4) of the Act 2015 starts with a non-obstante clause excluding the operation of any act and specifically providing that the provisions of this Act shall apply to all matters concerning the child in need, care and protection and child in conflict with law, but does not, in any manner, bar the power of the Court to grant anticipatory bail under Section 438 Cr.P.C. Non-obstante clause although operates in the areas covered in sub-section (i) and (ii) of Section 1 of Act 2015, under sub-section (i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social integration of child in conflict with law is provided. In so far as in a stage prior to the apprehension or arrest by a child in conflict with law is concerned, the Act is silent. The Parliament has not overridden the provision of Section 438 Cr.P.C. There is no provision in Section 1 and Section 4 or elsewhere in the Act 2015 making Section 438 Cr.P.C. inapplicable for offences punishable under the Act 2015. The liberty of a citizen has to be regulated by law. It has to be procedural, substantial, just and reasonable under Article 21 of the Constitution of India. There is no bar for grant of anticipatory bail to a child in conflict with law or a juvenile, although Section 1(4) of the Act 2015 begins with a non-obstante clause which operates in relation to Code of Criminal Procedure, but the same does not, in any manner, is inconsistent with regard to the provisions of anticipatory bail under Section 438 Cr.P.C. for a juvenile or a child ABAIL No. 8361 of 2020 & 31 others 23 of 42 in conflict with law although it is a discretion of the court concerned either to grant anticipatory bail or not, but the remedy of an anticipatory bail cannot be taken away for a juvenile or a child in conflict with law, if there is no specific bar to it. The Legislature has not expressly barred the application under Section 438 Cr.P.C. with regard to a juvenile or a child in conflict with law. If the Legislature had an intention to override the provision of Section 438 Cr.P.C. then the same should have been expressly stated that Section 438 Cr.P.C. shall not apply to a juvenile or a child in conflict with law. There is, however, no such provision in the Code. In these circumstances, therefore, the Legislature in its wisdom left it to the Court to bring about a harmonious construction of the two statutes, so that the two may work and stand together. This is also fully inconsonance with the principles laid down in construing the non-obstante clause in the statute. It would be relevant to point out that there are certain statutes which expressly excluded the provisions of Section 438 Cr.P.C. The exclusion of access to anticipatory bail as a remedy impinges upon human liberty. A child enjoys equal rights with other persons. Therefore, it would be in violation of all the principles and provisions to deny an opportunity to exercise right of preferring an application under Section 438 Cr.P.C.

12. If the legislature wanted not to extend the benefit of anticipatory bail to a child in conflict with law, the same would have been specifically barred to be in

operation for such person.

In Section 18 of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, an absolute bar on the application of Section 438 Cr.P.C. has been created. Section 18 of the said act reads as under:

“18. Section 438 of the Code not to apply to persons committing an offence under the Act – Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

13. Like it, no bar in the Act 2015 has been created for the application of Section 438 Cr.P.C. in it.

18. The importance of enacting Section 438 Cr.P.C. is explained by the Apex Court in the case of **Gurbaksh Singh Sibbia vs. The State of Punjab : (1980) 2 SCC 565**. It is observed in paragraph 12 of the said judgment that a person who has yet to lose his freedom by being arrested asks for freedom in the event of arrest. That is the stage at which it is imperative to protect his freedom, insofar as one may, and to give full play to the presumption that he is innocent. In fact, the stage at which anticipatory bail is generally sought brings about its striking dissimilarity with the situation in which a person, who is arrested for the commission of non-bailable offences asks for bail.

Further in paragraph 26, it has been observed that the beneficent provision contained in Section 438 Cr.P.C. must be saved, not jettisoned.

Further in paragraph 31, it was observed that in regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made.

19. The Apex Court in the case of **Sushila Aggarwal vs. State (NCT of Delhi) : (2020) 5 SCC 1** has taken a similar view as has been taken in the case of Gurbaksh Singh Sibbia (supra). While referring to the case of Gurbaksh Singh Sibbia (supra) in para 56, it is observed that life and liberty are the cherished attributes of every individual. The urge for freedom is natural to each human being. Section 438 Cr.P.C. is a procedural provision concerned with the personal liberty of each individual, who is entitled to the benefit of the presumption of innocence. As denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restrictions on the scope of Section 438 Cr.P.C., especially when not imposed by the Legislature. In para 57, it is observed that the provision for anticipatory bail is proliberty and was enacted as a measure of protection against arbitrary arrests and humiliation. There is absolutely no reason why this valuable right should be denied to a child, which is available to every individual.

20. The argument that the Act 2015 does not make provision in the nature of Section 438 Cr.P.C. and that Sections 10 and 12 of the Act 2015 are complete Code in themselves; is also not acceptable. Sections 10 and 12 of the Act 2015 operate “after” a child alleged to be in conflict with law is apprehended. Thus,

they refer to “post” apprehension stage. They do not refer to “pre” apprehension stage. Therefore, they cannot be in conflict with the provisions of Section 438 Cr.P.C. The non-obstante clause used in Section 12 operates only when there is a conflict between the provisions of the Cr.P.C. and the provisions of Section 12 of the Act 2015. Since there is no conflict between the provisions of Section 438 of the Cr.P.C. and Section 10 or 12 of the Act 2015, therefore, availability of right under Section 438 Cr.P.C. is not taken away to the detriment of a child. It in no manner creates an ouster for the application of Section 438 Cr.P.C.

21. A non-obstante clause is added to a provision in order to uphold its enforceability over another provision that is contradictory to it. It is well settled that the non-obstante clause has overriding effect only in case of inconsistency. (Reference: *Ajoy Kumar Banerjee Vs. Union of India* : (1984) 3 SCC 127, *Chief Information Commissioner Vs. High Court of Gujarat* : (2020) 4 SCC 702).

22. The non-obstante clause is in Sub-Section (4) of Section 1 and in Section 12 of the Act 2015. The same would come into play only if there is inconsistency in the provisions. That would only mean that in case of inconsistency alone, this provision under the Act 2015 would prevail. The Act 2015, as mentioned earlier, is enacted as a beneficial legislation and, therefore, if a child under the Act 2015 has any right under the general law, it cannot be taken away to the child's detriment by relying on these non-obstante clauses; particularly when there is no inconsistency between the Act 2015 and the provisions of Section 438 Cr.P.C.

23. In Section 5 Cr.P.C., it is stated that the Cr.P.C. shall not affect any special form of procedure prescribed by any other law for the time being in force.

24. This Court, thus, comes to the conclusion that a “child” or a “child in conflict with law” as per the Act 2015 can file an application for anticipatory bail under Section 438 of the Criminal Procedure Code, 1973 and the same would be maintainable. Since there is no bar under Section 438 Cr.P.C. restricting its application in so far a child in conflict with law is concerned, the same would be fully applicable. Further, since there is no bar for its applicability therein, the same would thus be applicable for a child in conflict with law as he cannot be left remedy-less till the time of his apprehension by the concerned authority or arrest whatever the case may be. The Legislature has not barred the application of ABAIL No. 8361 of 2020 & 31 others 40 of 42 Section 438 Cr.P.C. while legislating the Act 2015. Even the fundamental right of a child in conflict with law would get infringed if he is not given equal treatment in so far as the right for anticipatory bail is concerned. The same would apply to him subject to inbuilt restrictions in Section 438 Cr.P.C.”

10. The Punjab and Haryana High Court, in its elaborate judgment dated 29.05.2024, rendered in the case of ***Jatin vs. State of Punjab (2024:PHHC:076452-DB)*** and 33 analogous petitions, has considered the conflicting views expressed by the

different High Courts on the issue of maintainability of an Anticipatory Bail Application filed by a juvenile under Section 438 Cr.P.C. It has also taken into consideration the purpose and background of the enactment of the Act of 2015 and, defining the word "apprehension", has held that an Anticipatory Bail Application filed by a juvenile is maintainable. In the above referred judgment, the Punjab and Haryana High Court has also dealt with the relevant provisions of the Act of 2015 as well as the provisions of the Cr.P.C. extensively and has, thereafter, held as under:

"21. It is not disputed that the child in conflict with law is to be produced before the Board who is to proceed with in accordance with the provisions of the Act. We are seized with the issue regarding the rights of a child before production. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. The yawning chasm is the reason for the reference as to at this stage whether a child is entitled for any protection keeping in mind that the Act is an embodiment as such of a beneficial piece of legislation. This aspect has been time and again highlighted by the Apex Court if one goes back to the judgment in **Shipli Mittal vs. State of NCT of Delhi and Ors., (2020) 2 SCC 787** wherein a threadbare discussion as to how the Act came into force keeping in view the United Nations Convention on the Rights of Child and adopted by the United Nations General Assembly on 20.11.1989. The enactment of the 2002 Act while repealing the 1986 Act and, thereafter, the enactment of 2015 Act were all discussed while dealing with the gap as such again in the legislation, wherein the offences prescribing a maximum sentence of more than seven years but not providing any minimum sentence and whether they could be considered as a heinous offence within the meaning of Section 2(33) of 2015 Act was the question which had arisen before the Court. The protection granted to the child in conflict with law regarding the power of sentencing to death and life imprisonment was kept in mind and also the fact that the Court cannot re-write the law but the intention of the Legislature cannot be lost sight of while keeping in mind the golden rules of interpretation and whether the 4th category could be created. Resultantly, while keeping in mind the scheme of the Act that whether a child should be protected and treating children with an exception to the Rule. It was held that the exception has to be given a restrictive meaning and a view in favour of the children was taken while dealing with the offence which does not provide a minimum sentence of seven years which cannot be treated to be a heinous offence.

23. Article 39 of the Constitution provides that certain principles of policy are to be followed by the State, whereas sub-clause (3) provides that the State, in principle, shall direct its policies towards securing the health and strength of workers, men and women and the tender age of children would not be abused. Similarly, Article 15(3) of the Constitution provides that the State shall

endeavour prohibition of discrimination on the ground of religion, race, caste, sex or place of birth and gives the powers and protects the State from making a special provision for women and children. In **Shri Gurbax Singh Sibbia & Ors. Vs State of Punjab 1980 (2) SCC 565**, the Apex Court was seized of the personal liberty of the individual who had not been convicted of the offence regarding which he sought anticipatory bail in view of the fact that there is a presumption of him to be innocent. The argument as such was raised that the Legislature imposes unreasonable restrictions on the grant of anticipatory bail which are liable to be struck down being violative of Article 21 of the Constitution of India. Resultantly, it is held that the beneficial provisions contained in Section 438 of the 1973 Act must be saved and not jettisoned basically on the principle that an innocent person is entitled to freedom and opportunity to look after his own case and to establish his innocence.

24. The provisions of Section 438 Cr.P.C., thus, were examined and it was held that mere fear is not belief, which reason is not enough for the applicant to show that he has some sought of vague apprehension that someone is going to make an accusation against him in pursuance of which, he may be arrested. The language also which was used was that 'to give effect to Section 438, the anticipatory bail is to be sought when there is mere apprehension of arrest.'

25. The view was followed in Sushila Aggarwal's case (supra) by holding that enactment as such was accepted by the parliament of the crucial underpinning of personal liberty in a free and democratic country. The final conclusion by the Constitutional Court again was that the application seeking anticipatory bail should contain bare essential facts pertaining to the offence and why the applicant reasonably apprehends arrest. The factor which was to be kept in mind was to evaluate the threat or apprehension and the anticipatory bail could be filed as long as there was a reasonable basis for apprehending arrest.

26. While dealing with the limitation provided that whether there should be a fixed period to enable the person to surrender and seek regular bail, the answer was that there can be no inflexible time frame for which an order of anticipatory bail can continue and the anticipatory bail, depending on the conduct and behavior of the accused, can continue after the filing of the charge sheet. The earlier view as such were overruled by holding that once an FIR was lodged and the facts are clear and, therefore, there were reasonable basis for apprehending arrest.

27. In principle, the question which is to be kept in mind with which we are dealing at this stage is the word "apprehension" at the point of time before the CICL has to be produced before the Board. The word 'apprehend' as such is a feel of fear that something bad may happen. 'Apprehend' also means to catch somebody though the strict terminology of arrest may not be used. The usage of same is finally to apprehend the person which would be an aim to catch someone who took the law in his hands or who does something wrong. Normal term of apprehension is pertaining to arrest someone or detain someone who could be a suspect near the scene of the crime. The apprehension may be for a

second or minute or hours, whereas the detention can be for a longer period which can be specified. In contradiction with the criminal law, if someone is to be taken into custody, it could be by way of arrest with legal warrant or authority. As per the Cambridge dictionary, 'apprehend' means to catch and arrest someone who has not obeyed the law.

28. The word 'apprehension', as per the Blacks Law Dictionary, is:-

- (i) seizure in the name of law; arrest, apprehension of a criminal;
- (ii) Perception; comprehension, belief: the tort of assault requires apprehension by the plaintiff of imminent contact
- (iii) Fear and anxiety about the future especially about dealing with an unpleasant person or as difficult situation.

29. As per Collins Dictionary, the word 'apprehension' is also defined as the act of capturing or arresting whereas as per the Cambridge Dictionary, it would mean to catch or arrest someone who has evaded the law. Apprehension is, thus, an action that describes seizing, capturing or arresting a person and is to be seen in the context of police intervention and a situation where an alleged criminal is captured and taken away by Law Enforcement Agencies. The term 'detention', as per Black's Law Dictionary reads thus:-

'A person held in custody, confined or delayed by an authority, such as a law enforcement or government; a person held indefinitely without trial, especially for political reasons.'

30. Thus, it is an act of holding in custody, or confinement for a short period and amounts to captivity or incarceration.

31. The term arrest has not been defined in Cr.P.C. or in IPC though how arrest is to be made is referred to in Section 41. However, it is derived from a French word 'arrater' which means to stop or stay and signifies a restraint of a person. The niceties of the word 'custody' and 'arrest' and that they are not synonymous words was also examined by the Apex Court in **State of Haryana and others vs. Dinesh Kumar, (2008) 3 SCC 222**. It was held that it is true that in every arrest there is a custody not vice-versa and custody as such materializes into an arrest. Resultantly, it was held that mere surrender as such in Court for grant of bail may not be arrest as such but would be judicial custody. In **Directorate of Enforcement vs. Deepak Mahajan, (1994) 3 SCC 440**, it was held that if the two terms are interpreted as synonymous, it would be an ultra legalistic interpretation and if accepted and adopted would lead to startling anomaly and resulting in serious consequences. Thus, if noticed from this aspect, it would be apparent that if a person is to be apprehended and to be produced before Court, he but has to be in custody of an officer since apprehend means seizing or taking hold of a man. This power is only associated alongwith the power to investigate as laid down in **Bhavesh Jayanti Lakhani vs. State of Maharashtra and others, (2009) 9 SCC 551**. It is not disputed that the moment a juvenile is apprehended, he/she would necessarily has to be produced before the Juvenile Justice Board and, thus, detained. Therefore, the custody of the person being with the police

officials would amount to a detention or almost akin to arrest but though not formally provided under the Act with a definite purpose.

32. In contrast, the condition which would give the cause of action to invoke the provisions under Section 438 Cr.P.C. would be where a person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence.

33. Counsel also laid stress upon the fact that the word 'apprehension', if translated as such in vernacular, amounts to 'girftaar', which would pari material to bring it at par with the word "arrest" as provided for in Section 438 Cr.P.C. and if Hindi translation of the Act is to be seen, the word 'apprehension' has also been translated as 'girftaar'. Thus, for all practical purposes, there is an overlap as such and the benefit has to flow to the juvenile keeping in view of the fact that it is a beneficial piece of legislation which has time and again been upheld by the Apex Court while dealing with various provisions of the Act and also the earlier enactments which were holding the field at that point of time.

34. In fact, the word 'apprehend' as such has a larger meaning than arrest which can be at the initial stage before a formal stage of arrest is made. It is in such circumstances, the Act provides protection to a juvenile from such restraint being put upon him in the form of any preventive detention or from any joint proceedings of a child to be in conflict with law.

35. A lot of stress is also being made on Rule 8 of the 2016 Rules by Mr. Girdhar opposing the larger view that no FIR is to be registered except in an heinous crime and only when it is committed jointly with other adults, the lodging of the said FIR is permissible. In all other matters, information was only to be recorded by the Special Juvenile Police Unit or the Child Welfare Police Officer in the General Daily Diary followed by a social background report of the child and the circumstances under which the child was apprehended and forward it to the Board before the first hearing.

36. The relevant Rules which provide protection as such are laid down under Rule 8(1) which provides that no FIR is to be registered except if any heinous offences are alleged to have been committed by a child or when such offences are committed jointly with adults. Thus, an exceptions is made out as such to grant protection to the child. The proviso provides that the power to apprehend should be exercised only in regard to heinous offences unless it is in the best interest of the child. For cases of petty and serious offences, apprehending the child is not necessary in the interest of the child and intimation is to go alongwith the social background of the child to the Special Juvenile Police Unit or Child Welfare Police Officer alongwith an intimation to the parents or guardians as to when the child is to be produced for hearing before the Board. Various safeguards have been further provided as to how the child is to be treated under sub-clause (2) and the fact that he is not to be sent to the police lock up under sub-clause (3) and the Child Welfare Officer to whom the child is to be transferred, should be in plain clothes and not in uniform. Rule 9 talks about the production before the Board within 24 hours from his being apprehended alongwith report explaining the reasons and the procedure to be

followed therein.

37. Apparently, the said Rules also provide for an exception in the form of proviso that power to apprehend shall only be exercised with regard to the heinous offences unless it is in the best interest of the child. Thus, merely because of the fact that the word 'arrest' is missing in the Act, which is a complete Code in itself, we are of the considered opinion that a protection can be granted to CICL before he puts in appearance before the Board who will then proceed further in accordance with the provisions of the Act. The impact of apprehension can be held to be the same as an 'arrest' as the liberty is, therefore, curtailed. Apparently, while enacting the 2002 Act, the word 'arrest' was provided for in Section 12, where it was laid down that when a juvenile is arrested or detained or appears and is brought before a Board, he has to be released on bail subject to various conditions. Section 12 of the 2015 Act omits the word 'arrest'. Section 12 of the 2015 Act itself provides that any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person. The proviso attached to Section 12 of the 2015 Act provides restrictions regarding release on bail only on the ground that the release is likely to bring that person into association with any known criminal or expose the said persons to moral, physical or psychological danger or the person's release would defeat the ends of justice and specific reasons have to be recorded for denying the bail.

38. Reference can also be made to the protection provided under Sections 22 and 23 of the Act wherein, it is specifically mentioned that notwithstanding anything to the contrary provided under the Cr.P.C. or any preventive detention law for the time being in force, no proceedings shall be instituted and no order shall be passed under Chapter VIII of the Cr.P.C. which provides security for keeping peace and good behaviour. Thus, the provisions of Section 106 and 107 Cr.P.C. as such and the power to imprison in default of the security has also been granted in effect that the preventive measures of the execution as such under Section 107 has been kept out of from the ambit as such of the 2015 Act. Similarly, under Section 23 of the 2015 Act, no joint proceedings of the CICL and a person who is not a child has been provided irrespective of the provisions of Section 223 Cr.P.C., which provides for joint trial. Sections 22 and 23 of the 2015 Act read thus:-

“22. Proceeding under Chapter VIII of the Code of Criminal Procedure not to apply against child.

Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any preventive detention law for the time being in force, no proceeding shall be instituted and no order shall be passed against any child under Chapter VIII of the said Code.

23. No joint proceedings of child in conflict with law and person

not a child.-(1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child.

(2) If during the inquiry by the Board or by the Childrens Court, the person alleged to be in conflict with law is found that he is not a child, such person shall not be tried along with a child.”

39. It is, thus, apparent that at all places in the Act, the protection has been granted to the CICL. The interpretation, thus, has to be that the Legislature with the intention has deleted the word “arrest” keeping in mind the provisions in the Act and, therefore, there is only the word “apprehension” which has been used as a precursor is to the final arrest. Once a protection is granted to adults as such under Section 438 Cr.P.C. on the ground of apprehension of arrest, we do not seem any tangible reasons as to why the moment a juvenile is under the threat of apprehension, why the benefit of the provisions of Section 438 Cr. P.C. should be denied. Reference by Mr. Girdhar to Section 97 of the Act as to how the children are to be kept in Children’s Home or Special Home and a report has to be obtained as similar to Section 98 regarding the leave of absence to a child placed in an institution are the provisions which are placed in Chapter X under the Miscellaneous head. It is at a later stage how the rights of the children as such have to be kept in mind and it does not talk about any power as such at the prior point of time at the initial stage, with which are seized of. Rule 82A of 2016 Rules also similarly talks about an order of release to be made and how the child is to be placed and restored after hearing the child, his parents or guardians. The willingness of the child is to be seen and all are subsequent provisions after the Board has passed an order. In the absence of any exclusion as such that the provisions of Section 438 Cr.P.C. would not apply, we do not see any valid reason as to why any restrictive view is to be taken. It is time and again held that the bail is the rule and denial is the exception and for a child to be placed under disadvantage on account of the fact that the word “arrest” has not been mentioned in the Act does not do any justice to the purpose of the Act. Rather it is a conscious act of the legislation keeping in mind the beneficial provisions as such the omission as such has been made and it would not debar the children from the benefit of the provisions of Section 438 of the Act.

41. There is no dispute that the Court of Sessions and the High Court have the power to grant the benefit of anticipatory bail under Section 438 Cr.P.C. It is, thus, expressly clear that the right of the child is, thus, governed by these provisions under the Act itself. Section 2(20) of the 2015 Act reads thus:-

“(20) “Children's Court” means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act;”

42. Under Section 14(5)(d) & (e) of 2015 Act, the procedure prescribed under

the 1973 Code is to be applied for disposal of the petty offences and serious offences. Section 15(2) of the 2015 Act contains similar provisions that once the Board is satisfied on the basis of preliminary assessment, the matter has to be disposed of by it by following the procedure contained in the 1973 Code. Section 19(1)(i) of the 2015 Act provides for the proceedings of the Criminal Procedure Code and even the Child Welfare Committee under Section is to function as a Bench which is similar to Section 4(2) wherein also the Principal Magistrate having at least three years' experience and two judicial workers have to form a Bench while examining the right of the child.

43. *It is, thus, apparent that the stress is on the rights of the child which is not even left to a single person under the Act at the initial stage, which all point towards one aspect that the primary consideration is the welfare of the child. The Act time and again has reference to the 1973 Code at all stages, as mentioned above, and also in appeal as mentioned under Section 101(5) of the 2015 Act. The power of the High Court to call either on its own motion or on an application received in this behalf to call for the record of any proceedings in which any Committee or Board or Children's Court or Court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and its power to pass such order in relation thereto as it thinks fit.*

44. *Section 4 of the Cr.P.C. provides that how the trial of offences under IPC and other laws has to be done. It lays down that all investigations and queries had to be dealt with according to the provisions hereinafter contained. Similarly, under sub-clause 2 of the said Section, it is provided that all investigations and queries under any other law have otherwise to be also dealt with according to the same provisions but subject to any enactments for the time being in force which regulate the manner or place of investigation/inquiry. Similarly, Section 5 provides that the Code shall not affect any special or local law for the time being or any special form of procedure prescribed by any other law for the time being in force in the absence of a specific provision to the contrary. Thus, it would be clear that there is no such bar under the Act, regarding the right of benefit of the claim for anticipatory bail.*

45. *If it is read in juxtaposition with Section 12 and the provisions noticed above under Sections 14, 15, 101 of the 2015 Act, it would go on to show that the rights of the child as such who has committed a non-bailable offence and is liable to be apprehended or detained for purposes of to be brought before the Board provides an exception that he shall be released on bail notwithstanding anything contained in the Cr.P.C. or in any other law. Thus, further protection had been provided under Section 12 that if there are any exceptions as such regarding the provisions which have been made in the Cr.P.C., the same would not come in the way of a child who is to seek the benefit under Section 12. Thus, the nature and gravity of the accusation, the antecedents of the applicant and the possibility of fleeing from justice etc. are the factors which are to be kept in mind under Section 438 Cr.P.C. in case of a normal accused which would not stand in the way of CICL.*

45A. In *Shilpi Mittal's* case (*supra*), the Golden Rule of Interpretation was discussed and it was held that though the Courts cannot add or subtract the words from the Statute but if the intention of the Legislature is clear, then the Court can get over the inartistic or clumsy wording of the Statute.

45B. Similarly, in ***X vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another, (2023) 9 SCC 433***, the Apex Court went on to hold that the intention of the Legislature and the true legal meaning of the enactment and the mischief that the Statute was seeking is to be kept in mind. The said observations had flown while analyzing the object and the purpose of The Medical Termination of Pregnancy Act, 1971 and the purpose for which it was enacted. The relevant observations read thus:-

“31. The cardinal principle of the construction of statutes is to identify intention of the legislature and the true legal meaning of the enactment. The intention of legislature is derived by considering the meaning of the words used in the statute, with a view to understanding the purpose or object of the enactment, the mischief and its corresponding remedy that the enactment is designed to actualize. Ordinarily, the language used by the legislature is indicative of legislative intent. In *Kanai Lal Sur v. Paramnidhi Sadhukaran Gajendragadkar, J.* (as the learned Chief Justice then was) opined that “the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself.” But when the words are capable of bearing two or more constructions, they should be construed in light of the object and purpose of the enactment. The purposive construction of the provision must be “illuminated by the goal, though guided by the word. Aharaon Barak opines that in certain circumstances this may indicate giving “an unusual and exceptional meaning” to the language and the words used.

32. Before we engage in the exercise of purposive construction, we must caution that a court’s power to purposively interpret a statutory text does not imply that a Judge can substitute legislative intent with their own individual notions. The alternative construction propounded by the Judge must be within the ambit of the statute and should help carry out the purpose and object of the Act in question.”

46. Thus, the argument which has been raised as such on behalf of and in order to persuade us to take a restrictive view would go on to show that these provisions only provide the procedure and for restoration of right of the CICL and only would become operational at a subsequent point of time. Rather the specific exclusion of the word “arrest” in the 2015 Act would go on to show that the Legislature as such wanted to provide the protection as the word “apprehension” would be a precursor to the actual “arrest” which may not take place in view of the apprehension and, thus, would be a surplusage in the final write up of the Act keeping in view the protection which has been mandatorily granted for the grant of bail under Section 12 of the 2015 Act except for the exceptions laid down therein. Thus, the intention of the Legislature seems to be the conscious intention which has not to be read the other way by the Courts to

give it a restrictive view. In the absence of any specific bar to the contrary under the Act, which can be for example under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, we do not subscribe to the view to the contrary by the Courts which have taken a restrictive view. Apparently, keeping in view the benefits which are provided under Rule 8 regarding the prohibition to register a FIR, the word arrest has been consciously deleted so that there would no contradiction as such once the investigating agency is barred from arresting and can only apprehend and detain under the Act and Rules until the offence as such is of a heinous nature.

47. It is not disputed that the Apex Court in **Arnesh Kumar Jha vs. State of Bihar, AIR 2014 SC 2756**, has also laid down that there should not ordinarily be arrests for the offences punishable upto imprisonment of 7 years and, therefore, if the intention as such of the 2015 Act is to be kept in mind here to deny the CICL the benefits as such of approaching the Court for the relief of anticipatory bail under Section 438 Cr.P.C. would amount to frustrating the benefits of the legislation. Under Section 18(1)(g) of the 2015 Act, a limitation has also been provided for punishment only within a period of upto three years by the Board regarding a serious offence. In a similar situation, a larger Bench of the Apex Court in case **Pratap Singh vs. State of Jharkhand, 2005(3) SCC 551**, while dealing with the 1986 Act, had held that the whole object of the Act is to provide for the protection and overall development of the delinquent juvenile and it is a beneficial piece of legislation. It was held that the interpretation of the Statue of such beneficial legislation must be to advance the cause of legislation and not to frustrate the intendment of the legislation.

48. The gap apparently regarding how a child would be detained or kept prior to his production before the Board can be highlighted from Rule 9 which provides that if a child in conflict with law is apprehended, he shall be produced before the Board within twenty four hours of his being apprehended, along with a report explaining the reasons for the child being apprehended by the police. Thus, a similarly placed co-accused in a case of a heinous offence is entitled for the benefit of the anticipatory bail, whereas CICL is liable to be detained before he is produced before the Board though he is entitled for the grant of benefit of bail. Under Rule 9(4) also, it is provided that where the CICL is not being apprehended and the information in this regard is forwarded by the police to the Board, the Board shall require the child to appear before it at the earliest. Rule 9(6) further provides that in case the CICL is not produced before the Board or a single member of the Board due to child being apprehended during odd hours or distance, the child is to be kept by the Child Welfare Police Officer in the Observation Home in accordance with Rule 69-D of these Rules or in a fit facility and to be produced before the Board thereafter, within twenty-four hours of apprehending the child. Thus, there would arise various situations where the child would have necessarily have to forgoe his liberty before being produced before the Board on being apprehended and then detained.

49. Resultantly, keeping in view the above, **we are of the considered opinion that the broader view has been laid down** by the Chhattisgarh High Court in Sudhir Sharma's case (*supra*) and the Calcutta High Court in

*Surabhi Jain's case (supra) and the Aurangabad Division Bench of the Bombay High Court in Raman's case (supra) alongwith the judgment of the Allahabad High Court in Mohammad Zaid's case (supra) would be the right way as such to follow. Thus, **we do not follow the view** which has been taken by the other High Courts i.e. by the Madras High Court in K. Vignesh's case (supra), the Division Bench of the Madhya Pradesh High Court in Ankesh Gurjar's case (supra) and in Suhana Khatun's case (supra) by the Calcutta High Court. Resultantly, **we do not approve the views** laid down in **CRM-M-40284-2017, Ashokpreet Singh @ Showpreet Singh vs. State of Punjab, decided on 20.12.2017; CRM-M-19810-2018, Gurjinder Singh vs. State of Punjab decided on 24.05.2018 and CRM-M-5124-2018, Love @ Aarnav Singh vs. State of Punjab** whereas, **we approve the view taken in CRMM-19907-2020, Krishan Kumar (minor) through his mother vs. State of Haryana decided on 24.07.2020.**"*

11. The Allahabad High Court as well as the High Court of Punjab and Haryana, in **Mohammad Zaid vs. State of U.P. and Another** (supra) and **Jatin vs. State of Punjab** (supra), respectively, have dealt with each and every aspect of the issue and have also taken into consideration the relevant judgments passed by the Hon'ble Supreme Court, such as, **Gurbaksh Singh Sibbia Etc. vs. State of Punjab**, reported in **(1982) SCC 565** and **Shilpa Mittal vs. State of NCT of Delhi**, reported in **(2020) 2 SCC 787** etc. and, therefore, not much scope is available to deliberate further on the issue involved.

12. We have carefully taken into consideration the relevant provisions of the BNSS, which are corresponding to the provisions of the Cr.P.C., and dealt with by both the High Courts extensively in the above referred two judgments. We are of the view that the conclusion arrived at by both the High Courts is also applicable to the question regarding maintainability of Anticipatory Bail Application under Section 482 of the BNSS.

13. Personal liberty is recognized as a fundamental right under Article 21 of the Constitution of India. If an adult can apply for Anticipatory Bail in case he/she apprehends arrest, except in the cases where there is specific bar imposed on bail, there is no reason to deny that liberty to a child in conflict with law under the Act of 2015.

Otherwise also, there is no express bar under the Act of 2015 for child in conflict with law to apply for Anticipatory Bail, as has been imposed by Section 18 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for an accused. The Punjab and Haryana High Court has rightly concluded that the word "apprehend" has the same meaning as the word "arrest" has.

Therefore, we are in full agreement with the views expressed by the Allahabad High Court in ***Mohammad Zaid vs. State of U.P. and Another*** (supra) and the High Court of Punjab and Haryana in ***Jatin vs. State of Punjab*** (supra).

14. In view of the above, the Reference made by the learned Single Judge is answered as follows:

The Anticipatory Bail Application preferred by a juvenile under Section 438 of the Cr.P.C. or under Section 482 of the BNSS is maintainable.

15. Accordingly, this Reference is disposed of and the Registry is directed to list the Anticipatory Bail Application (*A.B. No. 3286/2023 - Dasarath Ray @ Dipjyoti Roy vs. The State of Assam*) before the appropriate Bench after a week.

JUDGE

CHIEF JUSTICE

Comparing Assistant